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November 30, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
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William F. Caton  
Acting Secretary  
Federal Communications Commission  
2025 M Street, N.W., Room 6324  
Washington, D.C. 20554

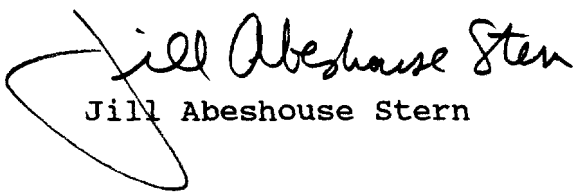
Re: PP Docket 93-253

Dear Mr. Caton:

On behalf of International Small Satellite Organization, I am transmitting herewith an original and nine copies of its reply comments in the above-referenced proceeding (Implementation of Section 309(j) of the Communications Act Competitive Bidding).

Should there be any questions concerning this matter, kindly communicate with the undersigned.

Sincerely,

  
Jill Abeshouse Stern

JAS:pad

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

PP Docket 93-253

REPLY COMMENTS

The International Small Satellite Organization ("ISSO"), by its attorneys, submits reply comments with respect to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding regarding implementation of competitive bidding pursuant to newly enacted Section 309(j) of the Communications Act of 1934, as amended.<sup>1/</sup>

I.  
INTRODUCTION

ISSO is an industry association which represents the interests of large and small companies seeking to expand commercial opportunities for small satellites and space systems. ISSO provides a focal point for the emerging domestic and international small satellite communities, and participates on

<sup>1/</sup> Notice of Proposed Rule Making, PP Docket No. 93-253, FCC 93-455, released October 12, 1993.

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behalf of the small satellite and launch industry in relevant regulatory and legislative proceedings. The association's members and supporters include public and private entities of varying sizes and geographical locations. Among those represented are manufacturers of small satellites and launch vehicles, ground equipment and subsystems; providers of launch services; state launch sites; providers and end-users of small satellite services.

ISSO and its members are strongly concerned about the Commission's apparent intention to use spectrum auctions to select among the pending Big LEO applicants. ISSO expressed concern, on behalf of its membership, prior to adoption of the spectrum auction legislation about the potential impact of spectrum auctions on implementation of the Big LEO systems. This concern is reflected in the statute and the underlying legislative history which acknowledges the unique circumstances of the Big LEO proceeding, and urges the Commission to avoid mutual exclusivity if possible.

As others have pointed out, the Big LEOs raise complex international issues due to their inherently global nature. The application of auctions to essentially global systems such as the Big LEOs would end up encouraging other countries to pursue similar practices. Having in effect deferred their own national regulatory activity pending the results of the FCC's proceedings, foreign regulatory agencies may feel that their forbearance has

yielded little in the way of a regulatory model for global systems and may find themselves under pressure also to use spectrum auctions as a revenue-raising device. U.S. private companies would suffer major setbacks as a consequence, with harm to U.S. telecommunications leadership and competitiveness.

Auctions in the Big LEO proceeding are clearly contrary to the public interest, for reasons set forth in these and other comments in this proceeding. However, if the Commission should nonetheless decide to use auctions, careful consideration should be given by the Commission to ensure that diverse companies, including small businesses, have an opportunity to participate as Congress intended. In the field of small satellites, small businesses have played a major role in technology innovation and development. It is therefore particularly important that opportunities for small businesses are preserved.

To ensure small business participation, ISSO strongly recommends that sufficient L-Band MSS spectrum be set aside exclusively for small businesses if auctions are adopted in the Big LEO proceeding. Set-asides have been used in other government contexts to encourage small businesses, and are appropriate here. ISSO suggests that half of the available L-Band spectrum (about 8 MHz) should be earmarked as a small business set-aside.

II.  
THE STATUTE AND UNDERLYING CONGRESSIONAL  
INTENT CLEARLY REQUIRE THE COMMISSION  
TO AVOID AUCTIONS FOR THE BIG LEOS

The statutory language and legislative history of newly adopted Section 309(j) together clearly indicate that Congress did not intend to subject the Big LEO systems to competitive bidding. Section 309(j) generally authorizes the Commission to allocate spectrum through a process of competitive bidding if mutually exclusive applications have been accepted for filing. That authority, however, is not without limit. The new legislation expressly requires the Commission to first meet its public interest obligation to avoid mutual exclusivity in spectrum allocation, before turning to auctions. Specifically, Section 309(j)(E) (emphasis added) provides:

Nothing in [§ 309] or in the use of competitive bidding, shall ...

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

The legislative history of Section 309(j)(E) further demonstrates that Congress was aware of the Big LEO proceeding, and specifically cited that proceeding as a "case in point" when it directed the Commission to explore avoiding ways of mutual exclusivity prior to using auctions. In this regard, the House

Report makes clear that the public interest requires the Commission to avoid mutually exclusive situations using whatever tools are "feasible and appropriate."<sup>2/</sup>

On the basis of the unequivocal statutory language and legislative history, spectrum auctions should not be used in the Big LEO proceeding. The Commission has feasible and appropriate tools for avoiding mutual exclusivity in the Big LEO proceeding. Ellipsat, TRW and Constellation filed a Joint Spectrum Sharing Proposal on October 8, 1993 that set forth an equitable approach to accommodating all of the applicants, as did Motorola and Loral Qualcomm separately. The Commission therefore has the means to avoid mutual exclusivity in this case and should do so.

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<sup>2/</sup> The House Report emphasizes that:

The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point. The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate.

House Report No. 103-111 at 258 (emphasis added).

III.  
A MINIMUM OF 8 MHZ OF MSS SPECTRUM  
SHOULD BE SET ASIDE FOR SMALL BUSINESSES

For reasons set forth herein, and in the comments filed by others in this proceeding, spectrum auctions are not appropriate for the Big LEOs, and would be contrary to the public interest.<sup>3/</sup> If the Commission should nonetheless decide to require auctions in this proceeding, ISSO strongly recommends, at a minimum, that provisions be established to ensure that small businesses are given a meaningful opportunity to participate as Congress intended.<sup>4/</sup>

The small satellite industry is comprised of companies of varying sizes. Indeed, the industry has historically provided an opportunity for smaller companies, because of the lower costs of building small satellites. It is the very economies of small satellites that have attracted interest in using these satellites to support a wide range of communications, remote sensing and scientific missions. In addition, statistics demonstrate that

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<sup>3/</sup> See, e.g., Comments of TRW Inc.

<sup>4/</sup> See Section 309(j)(4)(D) of the Communications Act, which provides:

In prescribing regulations pursuant to paragraph (3), the Commission shall- ...

(D) ensure that small businesses ... are given the opportunity to participate in the provision of spectrum-based services, bidding preferences, and other procedures.

small businesses have provided a fertile source of technological innovation and new jobs.

In order to provide a meaningful opportunity for small businesses to participate in the Big LEO service, the Commission must craft an appropriate standard for identifying small businesses and a mechanism for ensuring their participation. With respect to the definition of "small business," the Commission should refer to the regulations of the Small Business Administration which provide differing standards depending on the industry. The SBA has long experience in defining small businesses, and the FCC should defer to this expertise.

The Commission should also set aside a sufficient amount of MSS spectrum exclusively for small businesses that meet the relevant definition. A set-aside is consistent with the approach generally taken by other federal agencies to promote small business. For example, the government routinely sets aside a percentage of timber -- another government-allocated resource -- for small businesses.<sup>5/</sup> The timber set-asides range from approximately 30 to 80 percent, depending on market area.

In the Big LEO context, the appropriate spectrum set-aside is an amount sufficient to ensure the viability of small businesses in the MSS context. ISSO suggests that an equitable approach would be to set-aside 50% of the available L-Band spectrum (about 8 MHz) for small businesses. This would ensure a

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<sup>5/</sup> See 43 CFR 5441.1-3.



meaningful opportunity for small businesses to participate in the Big LEO service.

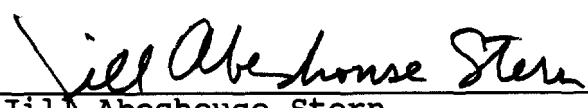
IV.  
CONCLUSION

For the foregoing reasons, spectrum auctions for the Big LEOs are contrary to Congressional intent and the public interest, and should not be used in the Big LEO proceeding. If the Commission should nonetheless decide to use auctions, a minimum of 8 MHz of MSS spectrum should be earmarked and set aside for small businesses.

Respectfully submitted,

INTERNATIONAL SMALL  
SATELLITE ORGANIZATION

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